

**To:** Knapp, Michael[Knapp.Michael@epa.gov]  
**Cc:** O'Brien, Brad (ENRD)[Brad.O'Brien@usdoj.gov]  
**From:** Kermish, Laurie  
**Sent:** Fri 2/28/2014 9:14:33 PM  
**Subject:** RE: Drake's Bay Citizen Suit

Thanks Michael.

## Ex. 5 - Attorney Work Product

I am sharing this with Brad O'Brien in DOJ just as an fyi in the event anything in this is being watched by DOI. Brad please share/or not as you wish.

Laurie Kermish

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**From:** Knapp, Michael  
**Sent:** Thursday, February 27, 2014 5:30 PM  
**To:** Kermish, Laurie

**Subject:** Drake's Bay Citizen Suit

Laurie,

California River Watch filed a notice that it intends to bring a citizen suit against Drake's Bay Oyster Company. The basic claim is that the facility is discharging storm water without a permit. Plaintiffs claim the facility falls under the industrial classification for Animal Aquiculture and/or Prepared Fresh or Frozen Fish and Seafoods, both of which require storm water permit coverage. I don't think there is anything in the notice that requires bringing to DOJ's attention. I've summarized below what I think are the two most interesting aspects of the claim:

- Discharges from a closed facility. River Watch acknowledges that the Oyster Company is closed but maintains that the facility must continue to have permit coverage until it eliminates the storm water discharges. It cites passages from the preamble to EPA's issuance of the NPDES Storm Water General Permit to support this position.

- River Watch claims that the defendant is discharging "Didemnum Vexillum" (DVEX), a fast-growing non-native sea squirt.

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Let me know if you would like me to follow up on these or any other matters regarding this notice.

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Michael Knapp

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